

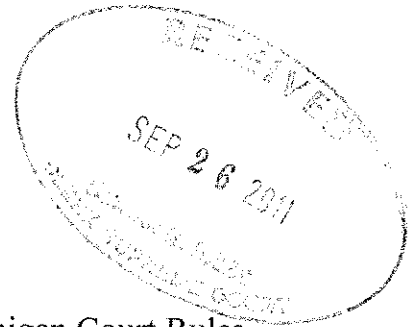
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September 22, 2011

Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, Michigan 48909



Subject: Proposed Amendment of Rule 6.001 of the Michigan Court Rules

Dear Clerk,

We are writing in opposition to the proposed change in rules. First, we would like to address the staff comment that the proposed change would preclude discovery in felony criminal cases. The proposed change is misguided for several reasons. First, there may be legitimate concerns about disclosing information to a defendant before testimony, including concerns about witness intimidation. However, all personal information of all witnesses is deleted in the materials we receive, which addresses this possible concern. Additionally, the prosecutor may use their subpoena power to take sworn testimony confidentially before the examination to preserve and protect the evidence they seek.

For defendants, discovery before the preliminary examination is critical for counsel to be effective. Case law clearly establishes that a criminal defendant is entitled to effective assistance of counsel at the preliminary examination because it is a critical stage of the proceeding. *People v. Carter*, 412 Mich 214, 215, 217-218 (1981) (citing to *Coleman v. Alabama*, 399 US 1, 90 S Ct 1999, 26 L Ed2d 387 (1979) (preliminary examination is critical stage of proceedings in which accused is entitled to counsel). The proposed rule runs afoul of this state and federally mandated constitutional right. Additionally, by law, examining magistrates are required to determine the credibility of witnesses. *People v. Paille #2*, 388 Mich 611 (1970). That obligation will be hampered since a defendant's ability to impeach a witness will be substantially reduced without discovery.

As a practical matter, it will cause delays, as attorneys will seek adjournments. And the proposal will compel lawyers to conduct examinations for the purpose of discovery. We expect a substantial increase in the number of preliminary examinations and therefore, costs to the courts, and unnecessary appearances by lay and law enforcement witnesses.

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The "pre-exam" program, as set up in Wayne County, has reduced substantially the number of cases going to preliminary examination. The essence of that program is to provide discovery to counsel so an informed decision can be made early in the process as to whether the case should be resolved by plea, prior to the exam, or an exam need be scheduled. Without discovery such a program would be impossible.

Finally, the proposed amendment addresses the entire subchapters of 6.000 to 6.500. Therefore, the proposal not only addresses discovery, it improperly imposes restrictions on the right of a speedy trial (6.004); right to the assistance of a lawyer (6.005); the requirements of a complaint (6.101); arrest warrants (6.102); summons (6.103); arraignment on the warrants, pretrial release (6.106); and grand jury proceedings (6.107).

In short, the proposal not only infringes on the constitutional rights of criminal defendants, it is over-broad in its scope and will create an unnecessary burden on the courts and witnesses. For these reasons, we would request that the proposal be rejected.

Respectfully submitted,



Craig A. Daly, P.C.

Samuel J. Churik

CAD/mdz

cc: Honorable Marilyn J. Kelly, Chief Justice
Honorable Michael F. Cavanagh
Honorable Maura D. Corrigan
Honorable Diane M. Hathaway
Honorable Stephen J. Markman
Honorable Elizabeth A. Weaver
Honorable Robert P. Young, Jr.